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EPA Region 10 FOIA Staff

*Via E-mail to: [r10foia@epa.gov](mailto:r10foia@epa.gov)*

*Also Via E-mail to: [Macdonald.jennifer@epa.gov](mailto:Macdonald.jennifer@epa.gov)*

**RE: FREEDOM OF INFORMATION ACT REQUEST**

Dear FOIA Staff,

This is a public records request. On behalf of the Community Association for Restoration of the Environment, Inc. ("CARE"), and Friends of Toppenish Creek ("FOTC"), I hereby request the following records:

1. All correspondence (written, e-mails, and the like) exchanged between EPA Region 10 and the industry group known as "Save Family Farming," including its affiliate "Yakima Family Farmers," (a/k/a "Eastern Washington Family Farmers"). Please also include any correspondences exchanged between EPA Region 10 and any *official representative*<sup>1</sup> of the aforementioned industry trade groups. Please search for records from January 1, 2018 to the present.
2. A complete copy of the records produced to Jay Gordon, Washington State Dairy Federation, in response to FOIA EPA-R10-2019-002479. Please include any decision reached by EPA on whether to grant or deny the fee waiver request made by Mr. Gordon and the Dairy Federation.

This is intended to be a narrow FOIA request. This request does **not** seek responsive records concerning or related to the "What's Upstream" program. It does **not** seek records created, exchanged, or produced in the official course of implementation and compliance with Administrative Order on Consent, SDWA-10-2013-0080, including records that are transmitted to this law office by Mark Larsen, Anchor QEA, or the respondents to the Administrative Order on Consent. I will be readily available to modify this request, narrow its scope, or discuss search terms, should such efforts become necessary.

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<sup>1</sup> "Official representative" expressly includes Gerald Baron. It should also be construed as including any representative contacting EPA directly on Save Family Farming's behalf.

Electronic records are preferred. If the size of the records exceeds 100 MB, please contact the undersigned about production on a CD, DVD, USB thumb drive, or other electronic media.

### **FEE WAIVER REQUEST**

CARE and FOTC hereby request a waiver of all fees incurred in fulfilling this FOIA request.

FOIA was designed to provide citizens a broad right to access government records. FOIA's basic purpose is to "open agency action to the light of public scrutiny," with a focus on the public's "right to be informed about what their government is up to." *U.S. Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773-74 (1989) (internal quotation and citations omitted). In order to provide public access to this information, FOIA's fee waiver provision requires that "[d]ocuments shall be furnished without any charge or at a [reduced] charge," if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). FOIA's fee waiver requirement is "liberally construed." *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003); *Forest Guardians v. U.S. Dept. of Interior*, 416 F.3d 1173, 1178 (10th Cir. 2005).

The 1986 fee waiver amendments were designed specifically to provide citizens and non-profit organizations like CARE and FOTC with access to government records without the payment of fees. Indeed, FOIA's fee waiver provision was intended "to prevent government agencies from using high fees to discourage certain types of requesters and requests," which are "consistently associated with requests from journalists, scholars, and non-profit public interest groups." *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984). As one Senator stated, "[a]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information..." 132 Cong. Rec. S. 14298 (statement of Senator Leahy).

EPA's fee waiver regulations are contained in 40 C.F.R. § 2.07. CARE and FOTC address each fee waiver requirement in turn:

(i) *The Subject of the Request Concerns the Operations of the Government.*

The subject of this request concerns interactions between EPA and industry trade groups, as well as background, internal information on how EPA handled the "peer review" and rollout of the Lower Yakima Valley study, "Relation Between Nitrate in Water Wells and Potential Sources in the Lower Yakima Valley, Washington." CARE and FOTC have reason to believe these industry trade groups are advocating for EPA to rescind or modify the study. CARE and FOTC also have reason to believe that these industry trade groups are seeking to have EPA dissolve or modify the above-referenced Administrative Order on Consent.

This FOIA request will provide crucial information to CARE and FOTC about whether, and to what extent, EPA is considering the trade groups' proposals, as well as

how the Agency handled the final stages of its Yakima Valley Study. The Yakima Valley Study and the Administrative Order on Consent are directly connected to the operations of EPA.

- (ii) *The Requested Information is “Likely to Contribute” to Yakima Valley Residents’ Understanding of EPA Operations and Activities.*

Information contained in responsive records are likely to reveal whether, and to what extent, EPA is receptive to the industry trade groups’ interests, and susceptible to political pressure from lobbying groups. It is also likely to reveal the strength and integrity of EPA’s science and decision-making, as contained within the Yakima Valley Study. The public, especially those impacted by dairy contamination of the aquifer in the Lower Yakima Valley, are extremely interested in understanding how EPA is working to protect their environment and their health, and whether EPA is prioritizing other industry interests over their own. Disclosure of this information will directly inform those points and demonstrate which interests EPA has deemed a priority.

To CARE and FOTC’s knowledge, this information is not already in the public domain. If it is, please direct us to it.

- (iii) *Disclosure of the Requested Information Will Contribute to the Understanding of a Reasonably Broad Audience of Persons Interested in the Subject.*

CARE and FOTC are the only grassroots, public interest organizations working in the Lower Yakima Valley to combat CAFO pollution and protect residents from groundwater contamination. Collectively, CARE and FOTC provide information directly to hundreds of members in the Valley that are interested in, and affected by, CAFO pollution. More broadly, the work completed by official representatives of CARE and FOTC is widely reported on by the Yakima Valley Herald Republic, the Sunnyside News, and larger news organizations from Seattle (including KOIN News). Advocates from CARE and FOTC serve on the GWAMA, are actively involved at the county-level to address air pollution issues from CAFOs, and have petitioned EPA under Title VI to investigate civil rights issues in the Lower Yakima Valley. CARE is also directly involved in the *Cow Palace* Consent Decrees, which are related in some respects to the Administrative Order on Consent.

CARE and FOTC will disseminate the information they obtain in this request through a variety of mechanism. CARE and FOTC provide information about CAFO pollution and CAFO regulation to its members via regular meetings, which are open to the public. FOTC also uses its website to disseminate information to the public. When needed, CARE and FOTC rely upon experts in the field to provide scientific analysis, which is also posted publicly. CARE and FOTC also routinely use information obtained in public records request in their advocacy efforts to secure environmentally-sound regulation of dairy CAFOs in the Lower Yakima Valley.

It should go without saying that CARE and FOTC have expertise in CAFO pollution, CAFO regulation, and EPA's involvement in CAFO issues in the Lower Yakima Valley. CARE was the lead plaintiff in the *Cow Palace* cases and has been actively involved in CAFO litigation since the late 1990s. Indeed, SEPs generated from CARE's lawsuits under the Clean Water Act provided much of the scientific evidence that lead to the Yakima Herald Republic's investigative series, "Hidden Water, Dirty Wells," which may regard as one of the catalysts that lead to EPA's Lower Yakima Valley study.

(iv) *Disclosure will Contribute "Significantly" to the Public's Understanding.*

Disclosure of the requested records will significantly contribute to the public's understanding of whether EPA is susceptible to political pressure from industry trade groups working to undermine EPA's Lower Yakima Valley Study and the Administrative Order on Consent. Written correspondences exchanged between EPA and Save Family Farming will directly and tangibly show how EPA is treating the trade groups' proposals. If EPA is considering revisions or rescission to the Lower Yakima Valley Study, or dissolving/modifying the Administrative Order on Consent, records responsive to this request will be publicly released to inform the public *directly* of what is going on behind the regulatory scenes. The public would not have access to this information but for this FOIA request.

(v) *CARE and FOTC Have No Commercial Interest in this Information.*

CARE and FOTC are non-profit corporations that have no commercial interest in this information. The primary interests of the requesters are purely driven by the public interest and the desire of these groups to see the CAFO industry end its widespread pollution of the surface and ground water in the Lower Yakima Valley.

For the reasons stated above, EPA should grant CARE and FOTC's request for a fee waiver.

Please contact the undersigned if you have any questions or concerns.

Sincerely,

/s/ Daniel C. Snyder

Daniel C. Snyder, OSB #105127  
Counsel for CARE and FOTC